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MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 17th September, 1951

S.R.O. 1409.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the banking companies and their workmen in the State of Rajasthan.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1, GURUSADAY ROAD, BALLYGUNGE, CALCUTTA—19.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

AWARD

Bank Disputes in the State of Rajasthan

By Notification No. LR-2(273), dated the 21st February 1950, the Central Government referred to this Tribunal for adjudication the industrial disputes that had arisen after 13th June 1949 or were apprehended between the employees of the Banks, specified in Schedule I of the said Notification and their Employers, in respect of matters specified in Schedule II thereof.

Notices were issued to the Banks—

- (1) directing them to give due publicity to the Notification among their employees;
- (2) directing the employees to file statements of claim in the office of the Tribunal by 15th March 1950 and to furnish copies thereof to the employers on the same day;
- (3) directing the Banks to file their written statements within ten days thereof, with copy to the employees; and
- (4) directing the Banks to report for record to this Tribunal as to the manner in which due intimation had been given to the employees.

Notices were also issued to the Bank Employees' Unions to file their statements of claim.

Statements of claims were received from the employees of different Banks—from Head Offices as well as from branches—and also from the Unions and Written Statements were duly filed by the Banks concerned.

The hearing of disputes emanating from the State of Rajasthan according to the Scheduled programme was taken up on the conclusion of hearing of cases from Uttar Pradesh at Naini Tal on the 12th and 13th June 1951. The representatives of United Commercial Bank, Bank of Bikaner, Bharat Bank and Hindusthan Commercial Bank attended the proceedings as well as the representatives of the U.P. Bank Employees Union. This award shall govern the complaints of employees of the Banks mentioned above and the same are hereby adjudicated upon *ad serialim* according to the Cause List.

I. Reference No. 21 of 1950

UNITED COMMERCIAL BANK LTD.

APPEARANCES:

Shri Gouri Shankar Seth assisted by Shri M. Krishnan for the Bank.

None for the applicant.

S. P. Gaja.—The applicant was not present and his case was heard *in absentia* with the application of Rule 19 of the Industrial Disputes (Central) Rules. The facts as disclosed from the application are these: The applicant was working in the Bank when he applied for leave in the month of February 1950 as his mother was seriously ill. The leave was not granted and the Manager asked him that if he wanted to go home, he should better tender his resignation. It was alleged that under these circumstances he was forced to resign which amounted to victimization. Reliance was placed on the letter of resignation (Ex. A) filed with the claim.

Shri Gouri Shankar in reply submitted that this was correct that the applicant applied for leave which was not granted but the same was refused because the Assistant Cashier was also on leave and the Manager was down with fever. The applicant was asked to wait for a couple of days till the Assistant Cashier returned to duty. But he insisted to be relieved immediately and tendered his resignation. It was further contended that his need was not so acute because his brother and father were also available to attend to the ailing mother. It was maintained that the leave was refused owing to the exigencies of the situation and he was not entitled to it as a matter of right. The other argument advanced on behalf of the Bank was that the applicant was appointed on temporary basis and as evidenced from his letter of appointment (Ex. 1) his services could be terminated without any notice. Now the resignation tendered by the applicant (Ex. A) by itself furnishes a complete answer to the point involved. It reads as follows:

Ex. A: "As my mother is seriously ill and have to go to Ahmedabad to fetch my brother's wife here at Jodhpur, there being no other female member to wait upon her and you refused to grant me leave under such gravity of situation. You will kindly accept my resignation just now as desired by you.

Sd/- S. P. Gaja."

The contents of the resignation letter are quite clear although the sting lies in the last words "as desired by you." The applicant was a temporary hand and it appears that he was upset on account of the illness of his mother, and resigned of his own accord. The reason for asking leave moreover was to fetch his brother's wife without explaining as to why his brother himself was not available. The Bank representative as discussed above has explained the position fully that leave actually was not refused but he was asked to wait for a couple of days. In consideration of all these facts and circumstances and in the absence of any cogent evidence that resignation was taken under duress or coercion I see no merit in the claim and the same is disallowed.

II. Reference No. 26 of 1950

BANK OF BIKANER LTD.

APPEARANCES:

Shri A. C. Kakkar, U.P. Bank Employees Union, for Shri B. B. Goel

Shri B. B. Goel in person.

Shri N. L. Nundy in person.

Shri H. L. Anand, Advocate, with Shri E. D. Benjamin, Superintendent for the Bank.

(1) Application of the President, Bank of Bikaner Employees Association, Bikaner, on behalf of himself and seven others regarding termination of service.—The President, Bank of Bikaner Employees Association, Bikaner who had filed this claim regarding the termination of services of eight employees, viz.—(1) Shri R. N. Sharma, (2) Shri S. N. Daga, (3) Shri H. P. Paliwal, (4) Shri O. P. Dhir, (5) Shri S. D. Bharadwaj, (6) Shri K. P. A. Menon, (7) Shri M. B. L. Mathur and (8) Shri C. D. Charan was not present, nor any representative of any Employees Union came forward to represent their case. The case accordingly was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules

The facts as disclosed from the statement of claim dated 12th September 1949 preferred by Shri R. N. Sharma, President, Bank of Bikaner Employees Association in his own name as well as on behalf of seven others mentioned above, put briefly are these: The aforesaid employees were working in the Bank in various capacities but it so happened that the management of the Bank of Bikaner terminated their services on 26th July 1949 without assigning any good reason. The one mentioned in the discharge order was that the services of the aforesaid employees were no longer required and were to be terminated with immediate effect. It was ordered that the Provident Fund and Security Deposit will be refunded in due course in accordance with the Bank's rules. It was further alleged *inter alia* that only a few days before the order of discharge a circular dated 25th May 1949 was addressed to all the members of the staff giving them a guarantee that no employee will be discharged without giving an opportunity to defend their case. Some of the employees had received special increments and promotions in recognition of their good work sometime earlier but soon after the management took exception to their Trade Union activities and in this connection one of the Bank's officer—Shri N. N. Katju tried to get information regarding the activities of the members of the Employees Association. The Association approached one of the Directors, Shri Chopra, but the instead of redressing the grievance of the employees told them that the management was contemplating to shift the administrative office from Bikaner to Bombay and consequently the retrenchment of the employees working there was to take place. It was next urged that Rajasthan Government had afforded all sort of facilities to the Bank at Bikaner and the Directors' move to shift the office to Bombay was traceable to punish the employees on account of their Trade Union activities. It was maintained that their case was one of victimization due to bad labour practice.

The Bank representative raised a preliminary objection to the effect that the cause of action arose in Bikaner State before the enforcement of the amended Act of 1950 and the Tribunal was not competent to try the claim emanating from Part B States under the old Act of 1947. Reliance was placed on the finding given in the Delhi Bank disputes award of this Tribunal in the case of Shri S. S. Tripathy and others. It was next argued that the applicants had already filed a claim with the All India Industrial Tribunal (Bank Disputes) Bombay and the same was rejected on the point of jurisdiction by their order dated 2nd June 1950 and as such this claim was not competent.

In the light of the finding already given in various cases emanated from Part B States both these legal objections prevail. The result is that the claim is rejected for want of jurisdiction.

(2) *N. L. Nundy*.—He joined the Bank in 1946 and was an old employee. His services were however terminated on the 5th August 1949 on the plea that he had attained the age of superannuation *viz.* 55. His case was that retirement should not have been forced upon him when no change could take place in the terms and conditions of services during the pendency of the All India Industrial Tribunal (Bank Disputes). It was also stated that he was holding a permanent and pensionable post with the Bikaner Government before accepting this job and his services were rather requisitioned by the Bank authorities from the Bikaner Government and as such the Bank was not justified in retiring him at the age of 55 on the plea of superannuation because in case his services had not been requisitioned from the Bikaner Government he could have earned a pension from the Rajasthan Government. Replying to the preliminary objection raised in the written statement on behalf of the Bank that this Tribunal has no jurisdiction as the case had emanated from Part B States, which was not included for the purpose of jurisdiction under the old Act of 1947, it was submitted that the Act has now been amended and all States except Jammu and Kashmir have been brought within the jurisdiction of the Tribunal. It was maintained that the amended Act should in all fairness have a retrospective effect on the cases which occurred in between the passing of the Act of 1947 and that of amended Act of 1950. Reference was made by way of analogy to a criminal case decided by the High Court of Rajasthan and ultimately upheld by the Supreme Court of India (Ex. A). The applicant finally stated that since he had been re-employed he would not ask to come back into the service of the Bank but he would claim compensation as detailed below:

- (a) Rs. 15 increment which fell due in 1948 till 1953 when he actually attained the age of 60.
- (b) Salary for 5 years.
- (c) Compensation for mental worry and dislocation from service at a premature time to the extent of Rs. 5,000.

Shri Benjamin pressed the preliminary objection that this Tribunal has no jurisdiction to hear the cases which emanated from Part B States as Rajasthan was and reiterated the arguments which were advanced in the previous case. There was yet another objection viz. that the applicant was working as a Manager and does not satisfy the definition of workman and the case was not triable by this Tribunal. On merits it was submitted that he was made to retire at the age of 55 on payment of full Provident Fund and salary for earned leave preparatory to retirement.

Now in the first place both the legal objections raised on behalf of the Bank prevail and the claim of the applicant is untenable for want of jurisdiction. Shri Nundy furthermore having received the full amount of Provident Fund as well as arrears of pay and for the period of earned leave, does not ask for reinstatement. The relief claimed therefore savours more of prospective gains; and this relief does not fall within the ambit of the Act. The claim stands dismissed on all counts.

(3) **B. B. Goel.**—His grievance is that he was an old employee and was working satisfactorily so far, so that whenever any special work was to be performed his services were requisitioned as a successful hand. It however so happened that he was transferred to Ganganagar branch in February 1950 as an Assistant Manager and on more than one occasions he had to differ with the Manager regarding certain irregularities committed by him in the Bank's business. Furthermore, at the time of sending half yearly return, the Manager asked him to manipulate certain accounts but he did not agree. The Manager accordingly was annoyed and out of spite got him transferred to Calcutta in September 1950. Although this transfer was not in consonance with the directions of the All India Industrial Tribunal (Bank Disputes), Bombay, having been made outside the State, he proceeded to Calcutta but on his way to Calcutta he became ill and dropped at Delhi and applied for leave supported by Medical Certificate. This leave was granted and he went back to his home place Hissar (Punjab) and applied for three weeks more leave supported by Medical Certificate wherein it was stated that he was prepared to go to Calcutta on recovery. The management did not however sanction the leave and informed him by their letter dated 6th November 1950 (Ex. B) that as the applicant had failed to carry out the transfer order his services were terminated and his dues and arrears were ordered to be paid to him.

Shri Benjamin, the Bank representative opposed the application and while giving the Bank's version made the following points:—

- (a) That it was wrong to say that there was any enmity between him and the Manager of Ganganagar, who recommended the case of Shri Goel for further increment as evidenced from letter dated 10th July 1950 (Ex. 3).
- (b) That the Manager furthermore accommodated him while recommending the leave as evidenced from letter dated 11th July 1950.
- (c) That the transfer was made in normal course because a vacancy occurred at Calcutta and the same was to be filled up by some one.

It was further argued that the applicant during his stay at Ganganagar enjoyed 3 months leave and after his transfer he was again granted 19 days leave with pay as a special case and he was directed to attend duty at Calcutta on 24th October 1950 positively. He failed to join and meanwhile he had been charge-sheeted for misconduct as borne out from Registered A/D letter dated 12th October 1950 (Ex. 8). No satisfactory explanation was forthcoming and the management came to the conclusion that Shri Goel had no intention to join at Calcutta and the Bank was constrained ultimately to terminate his services on 6th November 1950. Finally it was submitted that in case Shri Goel had been taken really ill at Delhi he could approach the Deputy General Manager, who resides at Delhi before proceeding to Hissar, his home place.

The case in nutshell of the Bank is that Shri Goel was discharged on the score of misconduct as stated in paragraph 3 of the charge-sheet which is reproduced as under:

Ex. 8.—“In view of your unsatisfactory past record and wilful breach of Head Office instructions as set forth above, please show cause why your services should not be terminated w.e.f. the afternoon of the 26th September 1950.”

Now so far as the transfer is concerned I think there is enough material on the record to conclude that Shri Goel was avoiding to join his post at Calcutta, and I am not prepared to believe that he was unable to proceed on account of illness.

The straight course for him was to protest against the transfer order which was made outside the State and to meet the charge of misconduct. But the cause of action in this case arose after 20th May 1950 and as such prior permission of the Tribunal under Section 33 was absolutely necessary under the amended Act even in the case of misconduct. The order of discharge accordingly suffers from the legal defect and I have no alternative but to allow the claim. In the result the claim succeeds and the Bank is directed to take Shri Goel back in the service but in view of the observations given above regarding his avoidance to join his post of duty at Calcutta I do not think any further relief by way of payment of back salary is needed. This direction will be carried out within one month from the date of the publication of the award.

III. Reference No. 32 of 1950

BHARAT BANK LTD.

APPEARANCES:

Shri R. N. Rastogi for the Bank.

None for the applicants.

(1) H. C. Anand.—The facts as disclosed from the application are that he was an old employee and joined at the time of inception of the Bank as an Accountant. He was subsequently promoted to the post of Manager in November 1944. It was alleged *inter alia* that he had put in more than 7 years loyal faithful service without any complaint having been made against him but his services were terminated without assigning any reason. It was maintained that his was a case of victimization. Finally, it was also stated that he had got back his Provident Fund amount under forced circumstances as he had no other means of livelihood to go by. Some documents were filed with the claim viz. the order of discharge dated 22nd March 1950 (Ex. A), his representation to the Managing Director, Bharat Bank, dated 24th March 1950 (Ex. B) and the final order communicated to him by the Bank dated 31st March 1950 (Ex. C).

Shri Rastogi on behalf of the Bank raised a preliminary objection that the applicant as admitted by him was working as Manager at the time of the termination of services and as such was an officer and does not satisfy the definition of 'workman' as laid down under Section 2(s) of the Act. The other legal objection raised by the Bank representative was to the effect that the case emanated from Bikaner State and as such this Court had no jurisdiction to take cognizance of these cases under Industrial Disputes Act. It was argued in this connection that the amended Act came into force in May 1950 while his services came to an end in March 1950 and the case was governed under the provisions of the old Act of 1947.

The applicant had no reply to the legal objections as to how this Tribunal is competent to try this case. The claim accordingly fails for want of jurisdiction.

(2) Application of the staff of Udaipur Branch of the Bank (10 signatories) regarding increment and promotion.—No one appeared on behalf of the employees. Shri Rastogi, Bank representative stated that the increments in question have since been released and the demand of the staff was satisfied. The matter needs no adjudication and is filed.

IV. Reference No. 42 of 1950

HINDUSTAN COMMERCIAL BANK LTD.

APPEARANCES:

Shri K. N. Bhatnagar for the Bank.

None for the applicant.

Ochhavilal Motilal Shah.—The applicant was not present and his case was heard in absentia under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. His case briefly is that he was an old employee having joined in 1948 but his services were terminated on the closure of Bhavnagar Branch where he was working on 30th November 1949. Relief sought for was for reinstatement and payment of his dues.

Shri Bhatnagar in reply on behalf of the Bank submitted that Bhavnagar branch was running at a loss and it became an uneconomic unit. The Bank had no alternative but to close the branch and under these circumstances all the employees working in the branch had become surplus to the requirement. It was next argued that no discrimination was made and the applicant was also retrenched on payment of one month's salary in lieu of notice. All other dues were also paid

to him but he was not entitled to the full contribution of Provident Fund having not put in 10 years or more and it could not therefore be helped. Reliance was placed on a copy of letter dated 31st October 1949 (Ex. 1) whereby he was called upon to collect his dues but as he failed the amount was deposited in his account. Shri Bhatnagar, however, conceded that no permission under Section 33 was obtained and contended that the same was not necessary in the case of retrenchment. This legal aspect of the question has already been considered in the case of Shri Prem Kishore Sharma (of Bharat Bank) in U.P. Bank disputes award and in the light of the finding that permission was necessary. The claim, therefore, technically succeeds for the purpose of reinstatement. The difficulty, however, which presents in this case is one of jurisdiction as the cause of action arose in 1949 before the amended Act of May 1950 came into force and under the old Act the jurisdiction of the Tribunal was not extended to Part B States as held previously. In the result, the claim fails for want of jurisdiction and is rejected.

Now, therefore, this Tribunal makes its award in terms aforesaid, this the 10th day of August 1951.

K. S. CAMPBELL-PURI, Chairman,
Central Government Industrial Tribunal, Calcutta

CALCUTTA;
Dated the 10th August 1951

(No. LN-50(133).1)
K. N. SUBRAMANIAN, Jr. Secy